

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 2771 OF 2005

IN

SUIT NO. 2490 OF 2005

Parasnath R. Singh Plffs.

VS.

Suresh R. Singh Defnds.

Rajeev Narula i/b. Ashok M. Sarogi for the plffs.

R.D. Soni for the defnds.

CORAM: S.U. KAMDAR, J.

DATE : 30th September, 2005.

P.C. : .

1. By consent of the parties the motion is made returnable forthwith and called out for hearing and final disposal.

2. The subject matter of the present motion is a flat bearing no.703/B situated at Shree Radhakunj

Co-operative Housing Society, Manmala Tank Road, Mahim (W). By prayer (a) it is sought that the defendant should be directed to hand over quiet, vacant and peaceful possession of the said premises to the plaintiff. By prayer (b) an injunction is sought that the defendant should be restrained from in any manner dealing in, disposing of or transferring or inducting or encumbering or creating any third party rights in the said flat. By prayer (c) appointment of the Court Receiver is sought. By prayer (d) an amount of compensation has been claimed for alleged illegal and unlawful user.

2. It is the case of the plaintiff that the plaintiff was the owner in respect of the aforesaid flats and that he has been illegally disposed from the said premises on 18.1.2003. On the other hand the defendant is claiming the flat under the MOU dated 9.9.2001 and it is the case of the defendant that he is entitled to the said flat and has been in further possession thereof.

3. It is not in dispute that the differences and disputes arising in respect of the MOU dated 9.9.2001 became the subject matter of the arbitration proceedings by reference on 26.5.2003. It is also not in dispute that the arbitrator has passed an award on 31.7.98 inter-alia holding that the defendant is entitled to the said flat premises and not the plaintiff under the aforesaid MOU. The said arbitration award is the subject matter of challenge u.s. 34 of the Arbitration and Conciliation Act, 1996 and the said petition is pending.

4. Pending the said petition the present suit has been filed for the recovery of possession by the plaintiff in respect of the said flat which is also the subject matter of an award by the arbitrator. It is the case of the plaintiff that the present suit is maintainable u.s. 5 of the Specific Relief Act, 1963.

5. It has been further the case of the plaintiff that the present suit is filed on title because the question of possession and/or dispossession thereof was not the subject matter of arbitration proceedings and therefore the award cannot come in the way of the plaintiff. It has also been contended that the defendant is not paying the outgoings in respect of the said flat being the society charges though he is in use, occupation and possession of the said flat. Learned counsel appearing for the defendant states that they have paid the outgoings and even if there is any arrears from the date of the MOU till today they will clear the same within a period of one week from today and continue to pay the necessary outgoing charges.

6. In so far as the other reliefs are concerned I am of the opinion that the present motion is totally frivolous and a total abuse of process of law. I am of the opinion that once the flat becomes the subject matter of arbitration proceedings and award having been passed on 13.7.2004 the right, title and interest in the

property including the right to possession of the said flat premises is governed by the said award and the said proceedings under the Arbitration and Conciliation act, 1996. In my opinion it is not open for the plaintiff to file a suit based on his title for the recovery of possession once the award has held that the defendant is entitled to the said flat which necessarily includes the possession thereof. If there is any grievance of the plaintiff the appropriate remedy for him was to take out appropriate proceedings in the pending petition challenging the arbitration award. I find that the present matter is totally frivolous. In that view of the matter motion dismissed. Plaintiff is directed to pay cost quantified at Rs.10,000/-.
